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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GREG DENBY,	)	Case No. CV 11-07939 DDP (AGRx)
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANT'S MOTION</b>
v.	)	<b>TO DISMISS</b>
	)	
MORTGAGE ELECTRONIC	)	
REGISTRATION SYSTEMS, INC.,	)	
	)	[Dkt. No. 4]
Defendant.	)	
_____	)	

Presently before the court is Defendant Mortgage Electronic Registration Systems, Inc. ("MERS")'s Motion to Dismiss Case. Having considered the submissions of the parties, the court grants the motion and adopts the following order.

**I. Background**

In February 2007, Plaintiff executed a promissory note for \$1,000,000, secured by a Deed of Trust against real property located at 12840 Rock Crest Lane, Chino Hills, California. (Notice of Removal at 59.) The deed identified nonparty First Horizon Home Loan Corporation as the lender and trustee and MERS as beneficiary and nominee for the lender. (Id. at 60.)

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1 On February 10, 2010, Quality Loan Service Corp., as agent for  
2 the beneficiary, recorded a Notice of Default. (Id. at 78.) On  
3 September 22, 2010, MERS assigned its beneficial interest in the  
4 deed to First Horizon, a division of First Tennessee Bank National  
5 Association. (Id. at 84.) That same day, First Tennessee  
6 substituted Quality Loan Service as Trustee. (Id. at 88.) On  
7 January 14, 2011, Quality Loan recorded a Notice of Trustee's Sale.  
8 (Id. at 95.) Quality Loan ultimately recorded a Trustee's Deed  
9 Upon Sale in favor of foreclosing beneficiary First Horizon/First  
10 Tennessee. (Id. at 98.)

11 Plaintiff filed suit against MERS in California state court,  
12 alleging causes of action for (1) fraud, (2) violation of  
13 California Penal Code sections 115 and 115.5, (cancellation of  
14 assignment of deed of trust, (4) cancellation of voidable contract,  
15 (5) cancellation of instruments, (6) slander of title, and (7)  
16 quiet title. MERS removed to this court, and now seeks to dismiss  
17 Plaintiff's complaint.

## 18 **II. Legal Standard**

19 Under Federal Rule of Civil Procedure 12(b)(6), a complaint is  
20 subject to dismissal when the plaintiff's allegations fail to state  
21 a claim upon which relief can be granted. When considering a  
22 12(b)(6) motion to dismiss for failure to state a claim, " a court  
23 must accept as true all allegations of material fact and must  
24 construe those facts in the light most favorable to the plaintiff."  
25 Resnick v. Hayes, 213 F.3d 433, 447 (9th Cir. 2000).

26 In Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009), the  
27 Supreme Court explained that a court considering a 12(b)(6) motion  
28 should first "identify[] pleadings that, because they are no more

1 than conclusions, are not entitled to the assumption of truth."  
 2 Id. Next, the court should identify the complaint's "well-pleaded  
 3 factual allegations, . . . assume their veracity and then determine  
 4 whether they plausibly give rise to an entitlement to relief."  
 5 Id.; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th  
 6 Cir. 2009) ("In sum, for a complaint to survive a motion to  
 7 dismiss, the non-conclusory factual content, and reasonable  
 8 inferences from that content, must be plausibly suggestive of a  
 9 claim entitling the plaintiff to relief." (internal quotation marks  
 10 omitted)).

### 11 **III. Discussion**

12 As an initial matter, Plaintiff's Opposition to the instant  
 13 motion makes no reference to Defendant's arguments seeking to  
 14 dismiss Plaintiff's first, second, fifth, sixth, and seventh causes  
 15 of action. Accordingly, those claims are deemed abandoned, and are  
 16 dismissed. See Shakur v. Schriro, 514 F.3d 878, 892 (9th Cir.  
 17 2008).

18 Plaintiff's Third Cause of Action to Void or Cancel Assignment  
 19 of Deed of Trust is premised on the argument that MERS did not have  
 20 legal authority to assign the deed of trust to First Horizon.  
 21 (Compl. at 28.) As described above, however, MERS was listed as  
 22 the beneficiary on the Deed of Trust. Several courts have held,  
 23 however, that MERS, as beneficiary, may assign its beneficial  
 24 interests. See, e.g. Wallace v. Mortgage Elec. Registration Sys.,  
 25 Inc., No. CV 11-8039 ODW, 2012 WL 94485 at \*2 (C.D. Cal. January  
 26 11, 2012); Cercedes v. U.S. Bankcorp, No, CV 11-219 CAS, 2011 WL  
 27 2711071 at \*5 (C.D. Cal. July 11, 2011); Wurtzberger v. Resmae  
 28 Mortgage Corp., No. CV 01718 GEB, 2010 WL 1779972 at \*4 (E.D. Cal.

1 April 29, 2010). Plaintiff's Third Cause of Action is, therefore,  
2 dismissed.


3 Plaintiff brings his Fourth Cause of Action for Cancellation  
4 of a Voidable Contract under various California statutes. The  
5 court need not address Plaintiff's contentions that MERS was not  
6 able to enter into contracts, however, because here MERS was not a  
7 contracting party. Plaintiff has therefore failed to state a  
8 plausible claim for cancellation of a voidable contract.

9 **IV. Conclusion**

10 For the reasons stated above, Defendant's Motion to Dismiss is  
11 GRANTED. Plaintiff's claims are dismissed, with prejudice.

12  
13  
14 IT IS SO ORDERED.

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16  
17 Dated: May 22, 2012

  
DEAN D. PREGERSON  
United States District Judge